

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)

2001 AUG -6 AM 9:00

DISTRIBUTION CENTER

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In re: \_\_\_\_\_)  
\_\_\_\_\_)  
ESSENTIAL.COM, INC. \_\_\_\_\_)  
\_\_\_\_\_)  
Debtor. \_\_\_\_\_)

Chapter 11  
Case No. 01-15339-WCH

**DEBTOR'S OPPOSITION TO MOTION OF UNITED STATES TRUSTEE  
TO CONVERT DEBTOR'S CHAPTER 11 CASE TO CHAPTER 7**

To the Honorable William C. Hillman, Chief United States Bankruptcy Judge:

Essential.com, Inc., the debtor and debtor-in-possession (the "Debtor"), hereby opposes the Motion to Convert this case to a proceeding under Chapter 7 ("Motion to Convert") filed by the United States Trustee ("US Trustee"). As the basis for this Opposition, the Debtor responds that:

- ◆ The Debtor is continuing its prepetition efforts for the orderly and expeditious wind down of its business affairs, including the retention of certain critical employees.
- ◆ Through the Sale Motion, as described below, and the generation of receivables through the continuation of services to its customers, the Debtor anticipates receiving amounts far in excess of its operating costs for the month of August, 2001.

- ◆ As a provider of interstate and intrastate telecommunication services, the Debtor is subject to various federal and state laws and regulations regarding the provision of telecommunication services. The improper termination of these services, including a failure to provide customers with advance notice of the

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intended termination, would subject the Debtor's estate to substantial administrative claims. In order to comply with these applicable laws and regulations and avoid such claims, the Debtor will need to continue operating its business for all or substantially all of the time required to consummate the sales described below.

- ◆ Through the Sale Motion, the Debtor has assured the uninterrupted and seamless transition of vital services to its customers. Conversion of the Debtor's case will likely result in a large percentage of Debtor's 70,000 individual and small business customers suffering an interruption in their telecommunications services.
- ◆ The wind down plan enacted by the Debtor serves a dual purpose of minimizing the diminution of assets of the estate, through the continued generation and collection of accounts receivable and avoidance of substantial administrative claims, and providing for the continuation and transition of vital services to its customers.
- ◆ Conversion of the Debtor's case to case under Chapter 7 will negatively impact the collection of the Debtor's accounts receivable, one of the largest assets of the Debtor's estate.

In summary, the Debtor has already put in place a process addressing all of the concerns alleged in the Motion to Convert and, indeed, the Debtor is in a far better position as compared to a chapter 7 trustee to obtain the relief sought by the Trustee. In further support of this Opposition, the Debtor states as follows:

## **I. Factual Background**

1. On June 29, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code ("Code") in this Court.

2. The Debtor continues to operate as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Code.

3. On July 18, 2001, the United States Trustee appointed an official committee of unsecured creditors (the "Committee"). At this time, the Committee does not have counsel.

4. The Debtor is in the business of reselling telecommunications services to residential and small businesses customers. The Debtor has been in the business of reselling telecommunications services, including long distance and local telephone service and high speed internet service, service since 1995.

5. As of the Petition Date, the Debtor had approximately 70,000 active subscribers in its Customer Base consisting predominately of households and small businesses. The individuals and businesses which make up the Customer Base rely on the Debtor, in many instances, for telephone and internet services.

## **II. Sale of the Debtor's Assets and Wind Down of Operations**

6. Prior to the Petition Date, the Debtor undertook efforts to sell all or substantially all of its business. The Debtor's primary asset is its active Customer Base of over 70,000 households and small businesses that subscribe to its services. The Debtor has ceased soliciting new customers and reduced its business operations to the minimum level necessary to preserve its assets pending an orderly liquidation.

7. Prior to and immediately after the Petition Date, the Debtor was negotiating for the transfer of its Customer Base for in excess of \$3,000,000. The

potential buyer notified the Debtor on July 18, 2001 that it was withdrawing its offer. Upon withdrawal of this offer, the Debtor immediately solicited bids and entered negotiations with additional interested parties regarding the acquisition of its assets.

8. On July 27, 2001, the Debtor filed the *Debtor's Motion to Amend Emergency Motion (I) For Authority To Sell Debtor's Assets By Private Sale Or Public Auction Free And Clear Of Liens, Claims, Encumbrances And Interests And For The Establishment Of Sale And Bidding Procedures; (II) Or, In The Alternative, For Authorization To Cease Providing Services And To Establish Notice Procedures For The Cessation Of Service; And (III) For The Granting Related Relief* ("Sale Motion").

Pursuant to the Sale Motion, the Debtor has entered into agreements for the transfer of its Customer Base designed to generate, at least, \$925,000 for the estate.

9. The Debtor has retained certain critical employees to assist in the orderly wind-down of its business affairs, to maintain the Customer Base in order to finalize the Sale Motion. The Debtor's current operations are required to insure that the transfer of its Customer Base and/or cessation of the services it provides to its Customer Base will occur as smoothly as possible and with the least amount of damage or harm to the Customer Base.

10. Following the consummation of the Sale Motion, the Debtor intends to substantially cease its operations and significantly reduce its workforce in order to minimize the costs of further administering its assets.

11. The Debtor's projected current monthly expenses for the month of August 2001 are approximately \$1,300,000. This includes amounts incurred in the ordinary course of the Debtor's operations for the collection of accounts receivable, the maintenance of its assets, including the Customer Base, the maintenance of

telecommunication services to the Debtor's current active customers, salaries and overhead. This amount reflects the substantial shut down of the Debtor's operations by August 15, 2001 following approval of the Sale Motion.

12. The Debtor's projected current monthly expenses for the month of August 2001 are approximately \$1,500,000. This includes amounts incurred in the ordinary course of the Debtor's operations for the collection of accounts receivable, the maintenance of its assets, including the Customer Base, the maintenance of telecommunication services to the Debtor's current active customers, salaries and overhead. This amount reflects the substantial shut down of the Debtor's operations by August 15, 2001 following approval of the Sale Motion.

13. As of July 30, 2001, the Debtor has approximately \$3,300,000 in cash and \$900,000 in accounts receivable representing both billed and unbilled amounts. During the month of July 2001, the Debtor collected approximately \$1,000,000 on its accounts receivable. The Debtor has allocated approximately \$1,300,000 for postpetition accounts payable for July 2001 operations for which bills have not yet been issued to the Debtor or are not otherwise due pursuant to their terms. The Debtor is current with all postpetition employee wages and taxes.

14. Prior to the Petition Date, the Debtor generated approximately \$290,000 in accounts receivable per week. In light of the Sale Motion and certain negative publicity affiliated with its bankruptcy filing, the Debtor realistically anticipates receivables to be generated during the first two (2) weeks of August 2001, while the Debtor is still providing services to its customers, to be less than prepetition levels. Nonetheless, the Debtor is confident that the proceeds from the Sale Motion and August 2001 generation of receivables will exceed its operational costs for August 2001.

### **III. Conversion of the Debtor's Case Is Not in the Best Interests of Creditors**

15. Contrary to the assertions in the Motion to Convert, the immediate and complete cessation of the Debtor's operations is not in the best interests of creditors or the Debtor's estate. Conversion may result in damages to the Debtor's customers and the incurring of substantial administrative claims against the estate.

16. As a provider of interstate telecommunication services, the Debtor is subject to Federal law and Federal regulations. *See* 47 U.S.C. § 214. The Debtor is also subject to the laws and regulations of various States as a provider of intrastate telecommunications services. To the extent the Debtor does not comply with such laws and regulations, it may be subject to monetary penalties which penalties may constitute administrative expenses of the estate.

17. Even if converted to a proceeding under chapter 7, a trustee would still be responsible for providing advanced notice of termination to its customers. While the termination notices were pending, the trustee would be obligated to continue to provide services the Debtor's customers. Thus, the trustee and the estate would incur the same administrative fees and costs as the Debtor.

18. Further, chapter 7 trustee would be required to make immediate decisions regarding the Debtor's operations. Undoubtedly, in addition to the Trustee's fees and other special consultants, the trustee would be require the services of employees of the Debtor in order to assist the trustee in understanding the Debtor's operations and affairs.

19. Because of the rapid erosion in the value of the Debtor's assets, especially the Customer Base, any delay associated with the trustee's appointment would only serve to further reduce their value.

20. Finally, a substantial asset of the Debtor is its accounts receivable. A conversion of the Debtor's case would negatively impact their collection. The Debtor anticipates generating in excess of \$1,000,000 in receivables from services rendered in July and August, 2001. The Debtor has a history of collection approximately 90% of its accounts receivable. Pursuant to the Sale Motion, the successful bidders will be responsible for collecting the accounts receivable and turning over the proceeds, after certain deductions, to the Debtor. In the case of a cessation of the Debtor's operations, it is highly likely that customers would dispute or otherwise refuse to pay outstanding accounts receivable. Further, in light of the smaller size of customers accounts, collection of outstanding accounts, without the threat of a discontinuation of service, would prove difficult at best.

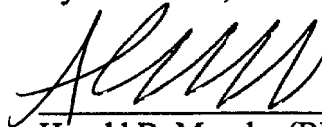
WHEREFORE, the Debtor respectfully requests that the Court enter an Order:

- A. Denying the United States Trustee's Motion to Convert in its entirety; and
- B. Granting such other relief as is just.

Respectfully submitted,

ESSENTIAL.COM, INC.,

By its counsel,



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Dated: July 31, 2001

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